

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Amanda Harouche	Team: Team # 1	CCRB Case #: 201405544	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 06/05/2014 11:30 PM	Location of Incident: Groton Street and 70th Avenue	Precinct: 112	18 Mo. SOL 12/5/2015	EO SOL 12/5/2015	
Date/Time CV Reported Fri, 06/06/2014 3:00 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 06/06/2014 2:51 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM David Castro	24439	933679	112 PCT
2. POM Kieran Tracy	17561	943888	112 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM David Castro	Abuse: PO David Castro stopped § 87(2)(b)	
B.POM Kieran Tracy	Abuse: PO Kieran Tracy stopped § 87(2)(b)	
C.POM David Castro	Force: PO David Castro used physical force against § 87(2)(b)	
D.POM Kieran Tracy	Force: PO Kieran Tracy used physical force against § 87(2)(b)	
E.POM David Castro	Abuse: PO David Castro frisked § 87(2)(b)	
F.POM Kieran Tracy	Abuse: PO Kieran Tracy frisked § 87(2)(b)	
G.POM David Castro	Abuse: PO David Castro searched § 87(2)(b)	
H.POM Kieran Tracy	Abuse: PO Kieran Tracy searched § 87(2)(b)	
I.POM Kieran Tracy	Abuse: PO Kieran Tracy searched § 87(2)(b) bag.	
J.POM David Castro	Abuse: PO David Castro searched § 87(2)(b) bag.	

Case Summary

On June 5, 2014, at 11:30 p.m., § 87(2)(b) was walking home from the 71st Street-Continental Avenue subway station (encl. 3a-7l). He was walking along 70th Avenue in Queens when PO Kieran Tracy and PO David Castro of the 112th Precinct allegedly saw him looking into cars and suspected that he was about to commit a crime. At the intersection of Groton Street and 70th Avenue, PO Tracy and PO Castro stopped § 87(2)(b) (**Allegations A and B**) and brought him to the ground (**Allegations C and D**). After handcuffing § 87(2)(b) PO Tracy and PO Castro frisked § 87(2)(b) (**Allegations E and F**). PO Tracy and PO Castro then allegedly entered § 87(2)(b) pockets (**Allegations G and H**). PO Tracy and PO Castro then searched § 87(2)(b) backpack (**Allegations I and J**). The officers released § 87(2)(b) and PO Tracy prepared a Stop, Question and Frisk report (encl. 11d).

This case was initially assigned to Inv. Shakina Griffith. Upon her departure from the agency, the case was reassigned to the undersigned investigator on December 19, 2014.

Mediation, Notice of Claim, and Criminal Histories

On § 87(2)(b), § 87(2)(b) filed a notice of claim with the City of New York (encl. 8a-b). As of January 28, 2015, a 50H hearing had not been held. As a result of this ongoing claim, this case was ineligible for mediation. [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer Histories

- This is the first CCRB complaint filed by § 87(2)(b) (encl. 1c)
- This is the first CCRB complaint filed against PO Castro during his 11 year tenure (encl. 1b).
- PO Tracy has been a member of service for eight years and has no prior substantiated CCRB complaints against him (encl. 1a).

Findings and Recommendations

Explanation of Subject Officer Identification

PO Tracy and PO Castro acknowledged interacting with § 87(2)(b) and both participated in the majority of the allegations. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation A: Abuse of Authority – PO David Castro stopped § 87(2)(b)

Allegation B: Abuse of Authority – PO Kieran Tracy stopped § 87(2)(b)

It is not in dispute that when PO Tracy and PO Castro approached § 87(2)(b) he did not believe that they were officers, tried to pass them, and was taken to the ground and handcuffed after a brief struggle. § 87(2)(b) denied looking into any vehicles as he walked home (encl. 3a-7l).

PO Tracy and PO Castro were assigned to an overtime post to address an auto break-in pattern at the incident location. According to PO Tracy and PO Castro, they observed § 87(2)(b) looking into a vehicle at Fleet Street and 70th Avenue in Queens. PO Tracy could not provide any further details about § 87(2)(b) actions (encl. 11a-g). According to PO Castro, § 87(2)(b) looked into the window of the vehicle with his hands up to his face, walked away and then returned and looked into the vehicle again. PO Castro suspected that § 87(2)(b) was going to break into the vehicle. § 87(2)(b) then changed direction (according to the officer memo books, he turned three times). § 87(2)(b) actions, in combination with the break-in pattern, caused the officers to suspect § 87(2)(b)

§ 87(2)(b) of grand larceny auto. According to the officer memo books, § 87(2)(b) attempted to run from them. PO Tracy and PO Castro stated that § 87(2)(b) attempted to push past them when they tried to stop him. § 87(2)(b) was ultimately taken to the ground and handcuffed.

Looking into two parked cars in an area known for car break-ins justifies a request for information. People v. Saad, 19 Misc.3d 1103(A) (Crim. Ct. Queens Cty., 2008) (encl. p-s). An officer may initiate a common law right of inquiry when he observes an individual engage in casing behavior and abruptly change direction. People v. Solomon, 6 A.D.3d 335 (App. Div. 1st Dep't. 2004) (encl. t-u)

§ 87(2)(g)

Allegation C: Force – PO David Castro used physical force against § 87(2)(b)

Allegation D: Force – PO Kieran Tracy used physical force against § 87(2)(b)

It is not in dispute that § 87(2)(b) tried to get away from the officers, who then took him to the ground. While on the ground, § 87(2)(b) struggled because he did not believe that PO Tracy and PO Castro were officers. The officers then handcuffed him.

§ 87(2)(b) had injuries to the left side of his face and left arm. He took photos of his injuries after the incident (encl. 7h-i). He sustained a laceration to the left side of his face when the officers held him down in the bushes and lacerations to his left arm during the struggle. § 87(2)(b) was treated at § 87(2)(b) and diagnosed with abrasions (encl. medical records)

According to Patrol Guide Procedure 203-11 (encl. v-w), during a police incident, an officer must use the minimum necessary force.

§ 87(2)(g)

Allegation E: Abuse of Authority – PO David Castro frisked § 87(2)(b)

Allegation F: Abuse of Authority – PO Kieran Tracy frisked § 87(2)(b)

It is undisputed that PO Castro and PO Tracy frisked § 87(2)(b)

PO Castro frisked § 87(2)(b) because the officers saw him looking into a car and § 87(2)(b) tried to get away from the officers, which led PO Castro to believe § 87(2)(b) could have tools which could be used as weapons. PO Castro frisked § 87(2)(b) by placing his hand on the outside of § 87(2)(b) pant leg and moving his hand up and down. PO Castro did not see where PO Tracy frisked § 87(2)(b)

PO Tracy feared for his safety when § 87(2)(b) tried to push past him because it was dark, he did not know who § 87(2)(b) was, and PO Tracy considered grand larceny auto a violent crime and therefore did not know if § 87(2)(b) had a weapon that could hurt him. PO Tracy did not recall

whether § 87(2)(b) was frisked, but noted that § 87(2)(b) was frisked on the Stop, Question and Frisk Report due to furtive movements and refusal to comply with officer's directions (encl. 11d).

To conduct a frisk, an officer must have reasonable suspicion that a person is armed, People v. De Bour, 40 N.Y.2d 210 (1976); People v. Batista, 88 N.Y.2d 650 (1996) (encl. a-o).

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

Allegation G: Abuse of Authority – PO David Castro searched § 87(2)(b)

Allegation H: Abuse of Authority – PO Kieran Tracy searched § 87(2)(b)

§ 87(2)(b) stated that PO Tracy and PO Castro simultaneously searched him by placing their hands into his pants pockets and removing his cellphone and wallet.

PO Tracy did not recall § 87(2)(b) person being searched or how his identification was retrieved. PO Castro denied placing his hands into any of § 87(2)(b) pockets and stated that § 87(2)(b) provided his identification. The Stop, Question and Frisk report notes that § 87(2)(b) was not searched.

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED].

Allegation I: Abuse of Authority – PO Kieran Tracy searched § 87(2)(b) bag.

Allegation J: Abuse of Authority – PO David Castro searched § 87(2)(b) bag.

§ 87(2)(b) stated that while he was standing and handcuffed, at least one officer, he could not see who, reached behind him and into his backpack and removed papers, a folder, a notebook and a playbill from it and then returned the items to his bag. The bag straps had fallen to § 87(2)(b) arms which were handcuffed behind his back but the bag was still on his back.

PO Tracy stated that while § 87(2)(b) was still handcuffed and his bag was still on his back, it was searched for weapons, such as a crowbar or screwdriver used to break into cars. PO Tracy did not recall whether he or PO Castro searched the bag or how the bag was searched.

PO Castro stated that after § 87(2)(b) handcuffs were removed, he and PO Tracy instructed § 87(2)(b) to open his bag, to see if there were any tools there, since he did not have any on his person. § 87(2)(b) complied and the officers looked inside the bag, but did not place their hands inside the bag.

§ 87(2)(g)

Where an object does not resemble or feel like a weapon, a further search is not warranted.
People v. Rodriguez, 18 Misc.3d 1124A (Sup. Ct. Bronx Cty., 2008) (encl. x-bb).

§ 87(2)(g)

Team: _____

Investigator:	_____	_____	_____
	Signature	Print	Date

Supervisor:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date